



IRA A. JACKSON
COMMISSIONER

The Commonwealth of Massachusetts
Department of Revenue
Leverett Saltonstall Building
100 Cambridge Street, Boston 02204

November 23, 1983

You inquire whether a foreign motor transport corporation ("Corporation") that is not qualified to do business in Massachusetts must pay the Massachusetts corporate excise in the circumstances described below.

The Corporation's trucks frequently transport goods over the road in Massachusetts. They may or may not pick up or deliver goods in Massachusetts. The Corporation may or may not be a federally licensed interstate common carrier.

Every foreign corporation exercising its charter, or qualified to do business or actually doing business in Massachusetts, or owning or using any part or all of its capital, plant or any other property in Massachusetts, must pay the Massachusetts corporate excise (G.L. c. 63, § 39).

General Laws Chapter 63, Section 39 provides that:

"[t]he excise levied herein is due and payable on any one or all of the following alternative incidents:

(1) The qualification to carry on or do business in this state or the actual doing of business within the commonwealth in a corporate form. The term 'doing business' as used herein shall mean and include each and every act, power, right, privilege, or immunity exercised or enjoyed in the commonwealth, as an incident to or by virtue of the powers and privileges acquired by the nature of such

November 23, 1983

organizations, as well as, the buying, selling or procuring of services or property.

(2) The exercising of a corporation's charter or the continuance of its charter within the commonwealth.

(3) The owning or using any part or all of its capital, plant or other property in the commonwealth in a corporate capacity.

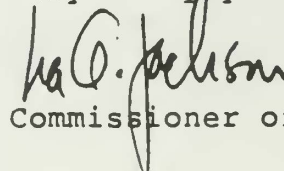
It is the purpose of this section to require the payment of this excise to the commonwealth by foreign corporations for the enjoyment under the protection of the laws of the commonwealth, of the powers, rights, privileges and immunities derived by reason of the corporate form of existence and operation."

A state tax does not offend the U.S. Constitution if it is applied to an activity with a substantial nexus with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and bears a fair relation to the services provided by the taxing state. Complete Auto Transit, Inc. v. Brady, 430 U.S. 274 (1977).

In Moore Motor Freight Lines, Inc. v. Wisconsin Department of Taxation, 14 Wis. 2d 377, 111 N.W. 2d 148 (1961), the Supreme Court of Wisconsin held that the imposition of that state's net income tax on a motor carrier did not violate the Commerce Clause or the Due Process Clause of the U.S. Constitution. The carrier's only contact with the state was the transportation of merchandise in interstate commerce through Wisconsin and to and from locations in Wisconsin. In rejecting the taxpayer's argument that there was not sufficient nexus to support the tax, the court declared, "[T]here is no necessity of finding any local activities by taxpayer in Wisconsin other than operating its trucks through the state over the state's highways." 111 N.W. 2d at 157.

Based on the foregoing, it is ruled that the Corporation is subject to the Massachusetts corporate excise.

Very truly yours,



Commissioner of Revenue

IAJ:JXD:mf

LR 83-93